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From the desk of:

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MEMORANDUM

TO: SDA

FROM: GAH

DATE: June 28, 2002

RE: **Town of Acton - Adoption and Implementation of Economic Development Plans under Chapter 135 of the Acts of 2001**

Steve:

You have asked me to review Roland Bartl's email to Don Johnson, in which he asked for the opinion of counsel on three questions relative to the above topic. I have reviewed Chapter 135 of the Acts of 2001 ("Act") and offer the following comments:

1. Under section 6(a) of the Act, an economic development plan has to be approved by a two-thirds vote of Town Meeting, which vote may only take place after the EDIC (the Economic Development and Industrial Corporation created by the Act) has held a public hearing. It is true, as someone apparently noted, that the Act does not specify that the EDIC has to write the plan itself, any more than the Zoning Act requires planning boards to write zoning amendments themselves. I don't think it matters all that much who actually writes it; it could be an outside consultant, a member of the Town's planning staff, or an unlucky volunteer. I do think it reasonably clear, however, that the EDIC is (or should be) ultimately responsible for the plan that gets recommended to the Town Meeting. If the EDC wants to jump-start the process to some degree by preparing a plan before the Town actually votes to establish an EDIC, it may, but it should be understood that this will not prevent the EDIC from recommending, or the Town from approving, something altogether different after the EDIC is established. A plan prepared before the EDIC was actually established would be nothing more than a suggestion.

2. As far as the need for specificity in an economic development plan is concerned, Section 2 of the Act states that an economic development plan -

shall be sufficiently complete to indicate the boundaries of the area, land acquisition, demolition, removal, and rehabilitation of structures, and such development, redevelopment and general public improvements as may be proposed to be carried out within the area, zoning and planning changes, if any, and proposed land uses, maximum densities and building requirements

I am not sure what to add to this definition, because it seems to require a fairly high level of specificity. Because it says plans must be "sufficiently complete to indicate" certain things, I read this as establishing a minimum level of specificity. If other sections of the Act are being read as calling for a more general approach, I would suggest that they should be read as adding to, and not subtracting from, the requirements of this definition.

3. The Act clearly calls for the Town's approval of economic development plans, but not for the approval of individual projects. That being said, the Act in no way limits the requirements of obtaining town meeting authorization for zoning changes, the taking of interests in land by eminent domain or otherwise, incurring debt, or any other municipal function for which town meeting votes are usually required. Therefore, Town Meeting votes may be required before specific projects may proceed, to the extent that those projects depend on the Town acting in any of these areas.

I hope this helpful.

Chapter 135 of the Acts of 2001

AN ACT ESTABLISHING THE ACTON ECONOMIC DEVELOPMENT AND INDUSTRIAL CORPORATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The general court finds that decadent or blighted open areas exist in certain portions of the town of Acton and that each such area constitutes a serious and growing menace, injurious and inimical to the safety, health, morals and welfare of the residents of the town; that each such area constitutes an economic liability, substantially, impairs or arrests the sound growth of the town, and retards the economic well-being of the commonwealth; that each decreases the value of private investments and threatens the sources of public revenue; that redevelopment of each such area in accordance with an economic development plan for the elimination of substandard conditions and the prevention of their recurrence is necessary to retain existing industries, commerce, and businesses, and attract new industries, commerce, and business and promote the sound economic growth of the town; that the menace of such decadent or blighted open areas is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aid herein provided; that the acquisition of property for the purpose of eliminating decadent, substandard, or blighted open conditions therein, preventing recurrence of such conditions in the area, the removal of structures and improvements of sites for manufacturing, industrial, commercial and business uses, the disposition of the property for redevelopment incidental to the foregoing, the exercise of powers by the corporation and any assistance which may be given by the town, or any other public body in connection therewith are public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the acquisition, planning, clearance, development, rehabilitation or rebuilding of such decadent and blighted open areas for industrial, manufacturing, commercial and business purposes, are public uses and benefits for which private property may be acquired by eminent domain or regulated by wholesome and reasonable orders, laws and directions and for which public funds may be expended for the good and welfare of the town and of this commonwealth.

The general court further finds that there exists in the town a condition of substantial underemployment which causes hardship to many individuals and families, wastes vital human resources, increases the public assistance burdens, impairs the security of family life, impedes the economic and physical development of the town and adversely affects the welfare and prosperity of the people; that underemployment has been caused in part by industrial companies moving from the town; that various existing industrial and manufacturing facilities within the town are obsolete and inefficient; that such facilities are underutilized or vacated, thereby creating lack of employment opportunities that the manufacturing and industrial sector of the economy, and commercial and business enterprises, provide the best immediate opportunities for better jobs at higher wages for inhabitants of the town; that new industrial and manufacturing sites, and sites for commercial and business enterprises are required to attract and house new industries and businesses and to retain existing industries in need of expansion space; that the unaided efforts of private enterprise have not provided and cannot provide the necessary industrial, commercial and business sites within the town due to problems encountered in the assembly of suitable building sites, the provision of adequate public services, the unavailability of sufficient private capital for development, and the inability of private enterprise alone to plan, finance and

coordinate industrial, commercial and business development projects.

The general court further finds that there exists considerable open and underutilized land, in large part brownfields land, suitable for industrial, commercial and business development; an adjacent blighted area; that there is substantial underemployment that exists in the town of Acton due to corporate mergers and downsizing of the major employer in the town of Acton; that there has been a significant reduction in commercial and industrial property tax revenue share; that there exists a substantial number of home businesses that have moved out of the town of Acton when they have outgrown their space within the home due to lack of available industrial, commercial and business building space, and that the town of Acton is experiencing increased formidable competition from nearby areas of rapid economic growth.

SECTION 2. As used in this act, the following words shall, unless a different meaning clearly appears from the context, have the following meanings:-

"Corporation", the Acton Economic Development and Industrial Corporation established by section 3.

"Cost of a project", all costs, whether incurred prior to or after the issue of bonds or notes hereunder, of acquisition, site development, construction, improvement, enlargement, reconstruction, alteration, machinery, equipment, furnishings, demolition or removal of existing buildings or structures, including the cost of acquiring any lands to which such buildings or structures may be moved, financing charges, interest prior to and during the carrying out of any project, interest for up to 2 years after completion or estimate completion date of any project, planning, engineering and legal service, administrative expense, the funding of notes issued for capital purposes, such reserve for debt service or other capital or current expenses as may be required by a trust agreement or resolution securing notes or bonds, and all other expenses incidental to the determination of the feasibility of any project or to carrying out the project or to placing the project in operation.

"Economic development area", any blighted open area or any decadent area, as respectively defined in section 1 of chapter 121B of the General Laws, which is located in the town of Acton and is zoned for general or restricted manufacturing uses or for general industrial uses whether restricted or not, or for commercial and business uses, or any open and underutilized land which is suitably zoned for the kinds of activities identified herein, including, but not limited to, research and development, commercial, light industrial and business uses and within which there are not more than 45 dwelling units.

"Economic development plan", a detailed plan, as it may be approved from time to time by town meeting as provided in this act, for 1 or more economic development projects within an economic development area, which plan shall be consistent with local objectives respecting appropriate land uses, and shall be sufficiently complete to indicate the boundaries of the area, land acquisition, demolition, removal, and rehabilitation of structures, and such development, redevelopment and general public improvements as may be proposed to be carried out within the area, zoning and planning changes, if any, and proposed land uses, maximum densities and building requirements; but, without specific approval by town meeting no economic development plan shall propose a zoning change.

"Economic development project", (1) a project to be undertaken in accordance with an economic development plan for acquisition by the corporation of land and the improvements thereon, if any, within an economic development area covered by an economic development plan and for clearance and development of the land so acquired; or (2) a project for the rehabilitation or conservation of an economic development area, or for the demolition, removal, or rehabilitation of improvements on land within an economic development area whenever necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, or eliminate

obsolete or other uses detrimental to the public welfare; or (3) for 1 or more qualifying industrial, commercial and, business uses; or (4) a project involving any combination of the foregoing types of project. An economic development project may include improvements necessary for carrying out the objectives of the economic development project, together with site improvements necessary for the preparation of any site for uses in accordance with the economic development plan, and making any land or improvements acquired in the area of the project available for redevelopment or rehabilitation by private enterprise, including sale, initial leasing or retention by the corporation for industrial, commercial, business or manufacturing uses contemplated by the economic development plan. An economic development project may also include the construction by the corporation of any of the buildings, structures or other facilities for industrial, commercial, business, or manufacturing uses contemplated by the economic development plan and the repair, removal or rehabilitation by the corporation of any of the buildings, structures or other facilities located in the area covered by the economic development plan which, under the plan, are to be repaired, moved or rehabilitated.

"Pollution control facilities", facilities for the prevention, avoidance, reduction, control, abatement or elimination of pollution of air or waters by industrial, commercial or business establishments by any means.

"Selectmen", the board of selectmen of the town of Acton.

"Town", the town of Acton.

"Town manager", the town manager of the town of Acton.

"Town meeting", town meeting of the town of Acton acting in a lawfully convened session.

SECTION 3. The town of Acton may organize an economic development corporation to be known as the Acton Economic Development and Industrial Corporation, a public body politic and corporate. No such corporation, however, shall be organized, transact any business, employ any personnel or exercise any powers until the town, at an annual town meeting or a special town meeting called for the purpose, shall by majority vote declare a need for such a corporation.

There shall be 7 members of the board of directors of the corporation who shall be appointed by the selectmen. At least 1 member shall be experienced in industrial or commercial development, 1 in financial matters, 1 in real estate matters, 1 in municipal government, and 1 member shall be from the community at large. The appointing authority shall designate 1 of the 7 members as chairman and another as vice-chairman. Each of the 7 members shall be sworn to the faithful performance of his official duties as a director of the corporation. A majority of the 7 directors shall constitute a quorum for the transaction of any business, but the action of a majority of the entire board shall be necessary for any transaction. For the purposes of section 11A of chapter 30A of the General Laws, the corporation shall be deemed to be an authority established by the general court to serve a public purpose in the commonwealth.

Of the members of the corporation first appointed, 2 shall be appointed to serve for 1 year from the first day of July in the current year, 2 for 2 years from said date, and 3 for 3 years from said date. Upon the expiration of the term of office of any such member, or of any subsequent member, his successor shall be appointed in like manner for a term of 3 years. In the event of a vacancy in the office of a member, his successor shall be appointed in like manner to serve for the unexpired term. Unless reappointed, no member of the corporation shall hold office after the expiration of his term; and the appointment of a successor to any person whose term has expired shall be for the remainder of the term which would have

begun at such expiration if the successor had then been appointed.

Any member may be removed by the board of selectmen for malfeasance, misfeasance, or willful neglect of duty, but only after reasonable notice and a public hearing, unless the same are in writing expressly waived. For purposes of chapter 268A of the General Laws, the members of the corporation shall be deemed to be special municipal employees.

Before the issuance of any bonds under the provisions of this act, each member of the corporation shall execute a surety bond with a surety company authorized to transact business in this commonwealth as surety, in the penal sum of \$50,000 conditioned upon the faithful performance of the duties of his office, each such surety bond to be approved by the legal counsel of the town and filed in the office of the state secretary. The members of the corporation shall receive no compensation for the performance of their duties hereunder, but each member shall be reimbursed for expenses actually incurred in the performance of his duties. Every such reimbursement shall be open to public inspection from and after the requisition therefore.

SECTION 4. The directors of the corporation shall adopt a corporate seal for the corporation, and designate the custodian thereof; may from time to time appoint and at pleasure remove a clerk, a treasurer or such other officers of the corporation as they may deem necessary, and may determine their duties and their compensation, which shall be paid by the corporation; shall cause at all times accurate accounts to be kept of all receipts and expenditures of the funds of the corporation; and shall make a report annually in December to the board of selectmen, containing an abstract of such accounts and detailed information of all receipts and expenditures, including prices paid for land purchased or taken and any buildings constructed thereon, contracts for construction of facilities and for the leasing thereof, and such other detailed information as may be deemed helpful. The office of treasurer and clerk may be held by the same person. The corporation shall cause an audit of its books and accounts to be made at least once in each fiscal year by certified public accountants and the cost thereof shall be treated as an item of current expense. Except as otherwise provided in this act, the corporation shall have full power to exercise care of its property and the management of its business and affairs, and to sell and convey any real estate or other property not needed for its business or affairs, by deed or other instrument sealed with the corporate seal, signed and acknowledged by a majority of the board of directors or in like manner to authorize such sale and conveyance by any of its officers or agents. The treasurer shall give bond for the faithful performance of his duties, with a surety company authorized to do business in this commonwealth as surety, in such sum as the said board may determine, the premium therefor to be paid by the corporation. Neither chapter 31 of the General Laws nor any rule made thereunder shall apply to any person employed or engaged by the corporation under this act.

SECTION 5. (a) The corporation may:

- (1) sue and be sued in its own name, and plead and be impleaded;
- (2) adopt by-laws for the regulation of its affairs and the conduct of its business, and to alter the same at its pleasure;
- (3) make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act, and to employ consulting engineers, superintendents, managers, and such other engineers, construction and accounting experts and attorneys and such other employees, agents and consultants as may be necessary in its judgment, and to fix their compensation;

- (4) receive and accept from any federal agency, the commonwealth or the town grants, loans or advances for or in aid of an economic development project or projects and to receive and accept contributions from any source of either money, property, labor or other things of value, to be held, used and applied for the purposes for which such grants, loans, advances and contributions may be made. The town may borrow outside its debt limits to obtain money for loan to the corporation, or within its debt limits to obtain money for grants to a corporation;
- (5) borrow money, and, from time to time, to make, accept, endorse, execute, and issue bonds, debentures, promissory notes, bills of exchange, and other obligations of the corporation, for moneys borrowed or in payment for property acquired or for any of the other purposes of the corporation, and to secure the payment of such obligations by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by other lien upon, assignment of, or agreement in regard to all or any part of the property, rights, or privileges of the corporation;
- (6) issue revenue bonds of the corporation, payable solely from revenues, for the purpose of paying all or any part of the cost of a project or projects, except that the town may, upon request by the corporation, pledge its full faith and credit to the solvency of a corporation;
- (7) invest any funds not required for immediate use or disbursement in certificates of deposit or in obligations of the government of the United States or in obligations the payment of the principal of, and interest on, which is guaranteed by the government of the United States;
- (8) provide such advisory services and technical assistance as may be necessary or desirable to carry out the purposes of this act;
- (9) prepare or cause to be prepared plans, designs, drawings, specifications and estimates of cost for the construction, reconstruction, development, redevelopment, rehabilitation, remodeling, alteration or repair of economic development projects and from time to time modify such plans, designs, drawings, specifications and estimates;
- (10) finance pollution control facilities in the same manner provided by this act for economic development projects, in which event all provisions of this act which are applicable to economic development projects apply to the pollution control facilities, insofar as such provisions are apt, except as otherwise provided;
- (11) subject to the approval of the town meeting, designate areas of the town as economic development areas;
- (12) acquire and hold by bequest, devise, grant, gift, purchase, exchange, lease, judicial order or decree, or otherwise, for any of its objects and purposes, any property, either real or personal, or any interest therein; and without limiting the generality of the foregoing, to acquire by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain following a public hearing and an affirmative 2/3 vote at an annual town meeting or a special town meeting called for the purpose, with the provisions of chapter 79 or chapter 80A of the General Laws insofar as such provisions may be applicable, such private lands, or any interests therein, as it may deem necessary for carrying out the provisions of this act or for providing for the relocation of persons and businesses displaced as a result of carrying out an economic development plan. Section 40 of said chapter 79 shall apply to any taking by the corporation, except that the security therein required shall be deposited with the treasurer of the town and shall be in an amount at least 25 per cent higher than the aggregate average assessed valuations in the 3 previous calendar years of all real estate to be

taken by eminent domain. Prior to approval of an economic development plan by the town after such a public hearing and in the manner described in this subsection, the date as of which the value of such lands shall be determined for eminent domain purposes shall be the date on which the said economic development plan was first submitted to town meeting;

(13) make relocation payments to persons and businesses displaced as a result of carrying out an economic development plan, including such payments on a pro tanto basis;

(14) procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;

(15) clear and improve property acquired by it, and to engage in or contract for the construction, reconstruction, development, redevelopment, rehabilitation, remodeling, alteration or repair thereof;

(16) arrange or contract with the town for the planning, replanning, opening, grading or closing of streets, roads, alleys or other places or for the furnishing of facilities or for the acquisition by the town of property or property rights or for the furnishing of property or services in connection with a project or projects;

(17) sell, convey, mortgage, lease, transfer option, exchange or otherwise dispose of, any property, either real or personal, or any interest therein, as the objects and purposes of the corporation may require, subject to such limitations as may be prescribed by law;

(18) loan on mortgages, including purchase money mortgages, on real estate and personal property within economic development areas, to foreclose the same when in default, and to bid for and purchase property at any foreclosure or other sale; and in such event, to deal with such property in such manner as may be necessary or desirable to protect the interests of the corporation therein;

(19) manage any project whether owned or leased by the corporation and to enter into agreements with the commonwealth or the town or any agency or instrumentality thereof or with any person, firm, partnership or corporation either public or private for the purpose of causing any project to be managed;

(20) act with respect to 1 or more projects as a corporation organized under section 3 or section 18B of chapter 121A of the General Laws; provided that the accounts for each project shall be kept separately, and the income of 1 project shall not be expended upon or for the benefit of another project;

(21) borrow money for the purposes of aiding in the construction of equipment required by the commonwealth or United States to abate air or water pollution;

(22) apply to the federal government or to the commonwealth for economic development assistance grants to meet in part the approved economic development projects, to receive and administer such grants, to contract with the commonwealth for financial assistance, to apply for and receive advances for the estimated costs of surveys and plans and administrative expenses in preparation for economic development projects, and to apply for, receive and administer community development action grants, all to the same extent and subject to the same terms and conditions as an urban renewal agency pursuant to sections 53 to 57A, inclusive, of chapter 121B of the General Laws; and

(23) do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

(b) The corporation shall pay the reasonable relocation costs of persons and businesses displaced as a

result of carrying out an economic development plan as authorized by clause 13 of subsection (a); but the corporation shall not be required to pay or contribute to the payment of the costs of any relocatee in excess of \$25,000.

SECTION 6. (a) No economic development project shall be undertaken until (1) a public hearing relating to the economic development plan covering such project has been held by the corporation after due notice; (2) the economic development plan has been approved by town by an affirmative 2/3 vote of an annual town meeting or a special town meeting called for the purpose. If no economic development project covered by an economic development plan is commenced within 7 years after the approval of the plan, the approval of the plan shall lapse.

(b) Every economic development plan submitted to the town for approval under this act (1) shall require that every person occupying the whole or any part of the economic development area covered by the plan during the period of 40 years after the approval of the plan shall make every reasonable effort, in employing persons in his business, to give to the fullest practicable extent preference to residents of the town, and (2) shall be accompanied by a report on the plan by the planning board of the town to whom the plan shall have been submitted before its submission to the town by a statement of the proposed method for financing each project covered by the plan, by a comprehensive relocation plan and by other information as the corporation deems advisable.

(c) Notice of the public hearing required by subsection (a) shall be given by the corporation to (1) such persons, groups and organizations as have requested in writing that such notice be given them, (2) any agency, whether of the town or of the commonwealth, likely in the judgment of the corporation to have an actual or potential interest in the economic development plan, (3) the senator for every senatorial district of the commonwealth, and the representative for every representative district thereof, within which the economic development area or any part thereof lies, and (4) each community group supported in whole or in part by public funds, whose territory covers all or part of the economic development area. In the course of preparing an economic development plan, the corporation shall consult with each of the aforesaid so far as in the judgment of the corporation it is practicable.

(d) If an economic development plan is approved by town meeting, the corporation shall have the powers and duties imposed by this act to undertake and carry out the economic development projects covered by such plan.

SECTION 7. Except as otherwise provided in this act, rents and charges for services or facilities furnished or supplied by the corporation shall not be subject to supervision or regulation by any department, division, commission, board, bureau or agency of the commonwealth or the town, and, if derived from a project in connection with which revenue bonds have been issued, shall, with all other revenues derived from the project, except the part thereof necessary to pay the cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of the bonds or in the trust agreement, but including the part thereof as may be necessary to provide reserves for the payment of the principal of and the interest on the revenue bonds as may be provided for in the resolution or trust agreement, and including also the proceeds of any and all sales by the corporation of property within the project area, be set aside at regular intervals as provided for in resolution or trust agreement, in a sinking fund which is hereby pledged to and charged with the payment of (1) the interest upon the bonds as the interest shall fall due, (2) the principal of the bonds as the same shall fall due, (3) the necessary charges of paying agents for paying principal and interest, and (4) the redemption price or the purchase price of bonds retired by call or purchase as therein provided.

SECTION 8. The corporation shall be liable in contract or in tort in the same manner as a private corporation. The directors, employees, officers and agents of the corporation shall not be liable as such

on its contracts or for torts not committed or directly authorized by them. The property or funds of the corporation shall not be subject to attachment or to levy and sale on execution, but if the corporation refuses to pay a judgment entered against it in any court of competent jurisdiction, the superior court, sitting within and for the county in which the corporation is situated, may, by writ of mandamus, direct the treasurer of the agency to pay the judgment. The real estate of the corporation shall not be subject to liens under chapter 254 of the General Laws but sections 28 and 29 of chapter 149 of the General Laws shall be applicable to any construction work by the corporation.

SECTION 9. The real estate and tangible personal property of the corporation shall be deemed to be public property used for essential public and governmental purposes and shall be exempt from taxation and from betterments and special assessments; but in lieu of taxes, betterments and special assessments, the town may determine a sum to be paid to it annually in any year or period of years, the sum to be in any year not in excess of the amount that would be levied at the then current tax rate upon the average of the assessed value of the real estate, including buildings and other structures, for the 3 years preceding the year of acquisition thereof, the valuation for each year being reduced by all abatements thereon.

The town may agree with the corporation upon the payments to be made, or the corporation may make and the town may accept such payments, the amount of which shall not in either case be subject to the foregoing limitation.

Nothing in this act shall be construed to prevent the taxation to the same extent and in the same manner as other real estate is taxed, of real estate acquired by the corporation for an economic development project and sold by it, or the taxation to the same extent and in the same manner as real estate of the commonwealth is taxed, of real estate so acquired by the corporation and leased by it; provided, however, that real estate so acquired by the corporation and sold or leased to an urban redevelopment corporation or other entity operating under chapter 121A of the General Laws or to an insurance company or savings bank or group of savings banks operating under said chapter, shall be taxed as provided in said chapter and not otherwise.

The corporation and the debentures, revenue bonds and revenue refunding bonds issued under this act, their transfer and the income therefrom including any profit made on the sale thereof, shall at all times be free from taxation by the commonwealth or any subdivision thereof.

SECTION 10. To provide funds for the general purposes of the corporation, including working capital, the corporation may from time to time issue debentures; provided, however, that such debentures outstanding at any one time shall not exceed \$5,000,000 unless specifically approved. Such debentures unless otherwise authorized by law shall not be deemed to constitute a debt of the commonwealth or of the town or a pledge of the faith and credit of the commonwealth or of the town and shall be subordinated to all other obligations of the corporation and shall be payable at such time or times and in such installments, if any, as the corporation shall determine, but solely out of the net assets of the corporation; and the holders thereof shall be entitled to interest thereon but only out of the net earnings of the corporation, and in no event at a rate higher than the rate specified therein.

Such debentures may be secured by a trust agreement by and between the corporation and a corporate trustee, which shall be located within the commonwealth and shall be a trust company or bank having the powers of a trust company. The trust agreement shall contain provisions for protecting and enforcing the rights and remedies of the debenture holders as may be reasonable and proper and not in violation of law. It shall be lawful for any bank or trust company incorporated under the laws of the commonwealth which may act as depository under the trust agreement to furnish such indemnifying bonds or to pledge such securities as may be required by the corporation. The trust agreement shall set forth the rights and remedies of the debenture holders and of the trustee, and may restrict the individual right of action by

debenture holders. In addition to the foregoing, the trust agreement may contain such other provisions as the corporation may deem reasonable and proper for the security of the debenture holders. All expenses incurred in carrying out the trust agreement may be treated as an item of current expense.

SECTION 11. The town may raise and appropriate or may borrow, or may agree with the corporation or with the federal government or the commonwealth to raise and appropriate or to borrow, in aid of the corporation, sums necessary to carry out the purposes and powers of the corporation including defraying part of the development, acquisition and operating costs of any project. Indebtedness of the town authorized under this section shall be outside the limit of indebtedness prescribed in section 10 of chapter 44 of the General Laws and shall be payable within 20 years and otherwise subject to sections 16 to 27, inclusive, of said chapter 44; provided, however, that the total amount of indebtedness of the town, outstanding at any one time under this section and clauses (1), (2), and (4) of section 20 of chapter 121B of the General Laws shall not exceed 5 per cent of the town equalized valuation as defined in section 1 of said chapter 44. Indebtedness incurred under this act shall also be subject to approval under section 22 of said chapter 121B of the General Laws in like manner as indebtedness incurred under said section 20.

SECTION 12. The corporation may provide by resolution, one time or from time to time, for the issuance of revenue bonds of the corporation for the purposes of paying all or any part of the cost of a project or projects. The principal of and interest on the bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rates, and shall mature at such time or times not exceeding 40 years from their date or dates, as determined by the corporation, and may be made redeemable before maturity, at the option of the corporation, at such price or prices and under such terms and conditions as fixed by the corporation prior to the issuance of the bonds. The corporation shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within the commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of the bonds, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until the delivery. The bonds may be issued in coupon or registered form or both, as the corporation may determine and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest. The corporation may sell the bonds in a manner, either at public or at private sale, and for a price, as it determines to be for the best interests of the corporation.

The proceeds of the bonds shall be used solely for the payment of the cost of the project or projects, and shall be disbursed in a manner and under restrictions, if any, as the corporation may provide. Prior to the preparation of definitive bonds, the corporation may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The corporation may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Revenue bonds may be issued under the provisions of this act subject only to those proceedings, conditions or things which are specifically required by this act.

The corporation may provide by resolution for issuance of revenue refunding bonds of the corporation for the purpose of refunding any revenue bonds then outstanding and issued under this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of the bonds, and, if deemed advisable by the corporation, for the additional purpose of constructing or reconstructing any extensions or improvements of the project. The issue of the bonds, the maturities, and other details thereof, the rights of the holders thereof, and the duties of the

corporation in respect of the same may be applicable.

While any bonds issued by the corporation remain outstanding, the powers, duties or existence of the corporation shall not be diminished or impaired in any way that will affect adversely the interests and rights of the holders of such bonds.

Revenue and revenue refunding bonds issued under this section, unless otherwise authorized by law, shall not be deemed to constitute a debt of the commonwealth or of the town, or a pledge of the faith and credit of the commonwealth or of the town, but the bonds shall be payable solely from the funds herein provided therefor from revenues. In the event that the corporation, or town or commonwealth is not obliged to pay the revenue and revenue refunding bonds, then, and in that event, all the revenue and revenue refunding bonds shall contain on the face thereof a statement to the effect that neither the corporation nor the commonwealth nor the town shall be obliged to pay the same or the interest thereon except from revenues and that neither the faith and credit nor taxing power of the commonwealth or of the town is pledged to the payment of the principal of or the interest on the bonds.

All revenue and revenue refunding bonds issued under the provisions of this act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments as defined in section 3-104 of chapter 106 of the General Laws.

SECTION 13. In the discretion of the corporation such revenue bonds or revenue refunding bonds may be secured by a trust agreement by and between the corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the commonwealth. The trust agreement may pledge or assign the revenues to be received, but shall not convey or mortgage any project or part thereof.

Either the resolution providing for the issuance of bonds or such trust agreement may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law, including without limiting the generality of the foregoing provisions defining defaults and providing for remedies in the event thereof, which may include the acceleration of maturities, and covenants setting forth the duties of, and limitations on, the corporation in relation to the acquisition, construction, improvement, enlargement, alteration, equipping, furnishing, maintenance, operation, repair, insurance and disposition of property, the custody, safeguarding, investment, and application of moneys, the use of any surplus bond or note proceeds and the establishment of reserves. The resolution or trust agreement may also contain covenants by the corporation in relation to, among other things: (1) the establishment, revision and collection of rents and charges for services of facilities furnished or supplied by the corporation as shall provide revenues sufficient with other revenues of the project, if any, to pay (i) the cost of maintaining, repairing and operating the project and of making renewals and replacements in connection therewith, (ii) the principal of and the interest on the revenue bonds as the same shall become due and payable, (iii) payments in lieu of taxes, betterment and special assessments, and (iv) reserves for all such purposes; (2) the purpose or purposes for which the proceeds of the sale of the bonds shall be applied and the use and disposition thereof; (3) the use and disposition of the gross revenues of the corporation from the project, any additions thereto and extensions and improvements thereof, including the creation and maintenance of funds for working capital and for renewals and replacements to the project; (4) the amount, if any, of additional revenue bonds payable from the revenues of the project and the limitations, terms and conditions on which such additional revenue bonds may be issued; and (5) the operation, maintenance, management, accounting and auditing of the project and of the income and revenues of the corporation. It shall be lawful for any bank or trust company incorporated under the laws of the commonwealth to act as depository of the proceeds of bonds or of revenues and to furnish the indemnifying bonds or to pledge such securities as may be required by the corporation. The trust agreement may set forth the rights and remedies of the

bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, the trust agreement may contain other provisions as the corporation deems reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the trust agreement may be treated as a part of the cost of the operation of the project. The pledge by any such trust agreement or resolution shall be valid and binding from the time when the pledge is made; the revenues or other moneys so pledged and then held or thereafter received by the corporation shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act; and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the corporation, irrespective of whether the parties have notice thereof. Neither the resolution nor any trust agreement by which pledge is created need be filed or recorded except in the records of the corporation, and no filing need be made under chapter 106 of the General Laws.

SECTION 14. Revenue bonds and revenue refunding bonds issued under the provisions of this act are hereby made securities in which all public officers and public bodies of the commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments and within the limits set by section 14 of chapter 167E of the General Laws, banking associations, investment companies, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds, including capital in their control or belonging to them; and the bonds are hereby made obligations which may properly and legally be made eligible for the investment of savings deposits and the income thereof in the manner provided by section 2 of chapter 167F of the General Laws. The bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or other obligations of the commonwealth is now or may hereafter be authorized by law.

SECTION 15. Any holder of bonds or debentures issued under this act or of any coupons appertaining thereto, and the trustee, except to the extent the rights herein given may be restricted by the trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the commonwealth or granted hereunder or under the trust agreement, and may enforce and compel the performance of all duties required by this act or by the trust agreement, to be performed by the corporation or by any officer thereof.

SECTION 16. Insofar as this act is inconsistent with the provisions of any other law, general or special, excluding any state or the town building code and the town zoning bylaw, this act shall be controlling.

SECTION 17. This act, being necessary for the welfare of the town and its inhabitants, shall be liberally construed to effect the purpose thereof.

SECTION 18. If the town shall modify its charter, or if it shall adopt a new charter, then without amendment of this act, the provisions of this act which refer to specific town officials or town bodies shall be understood, upon a charter change, to refer to those who under such change exercise the same or equivalent functions.

SECTION 19. This act shall take effect upon its passage.

Approved November 17, 2001.

Working Outline

Economic Development Industrial Corporation

Economic Development Plan

Submitted by: Economic Development Committee

Rev Level: 2

Date: May 23, 2002

Note: *[italics in brackets signifies a question, issue, or research required]*

Note: This document is not meant to be a description of what an EDIC is, or how it works in any detail, nor is it meant to be promotional material for public hearings, Town Meeting, etc. This document is a business plan. The EDC will prepare a separate document explaining the "what/how/why" of an EDIC.

I. Purpose of the Acton EDIC

The purpose of the Acton EDIC is to act as a public interest developer, with the goals of:

- a. lessening the residential tax burden
- b. insuring that development in Acton is consistent with the wishes of the Town, as defined in the Master Plan Update

The Economic Development portion of the Master Plan Update reads, in part:

Goal: Promote current and new commercial development within the context of the Master Plan by strengthening the tax base to reduce the burden on residential taxpayers.

Objective: Support commercial and industrial growth that will fit in Acton and contribute to the community's quality of life and fiscal stability.

- encourage commercial and industrial development
- attract new businesses
- increase the diversity of new enterprise
- increase commercial, industrial and personal property revenues to 20%

within the next five years.

Objective: Support the concept of village and business districts by encouraging businesses of appropriate scale that will contribute to a mix of activities.

The corporation will be known as the Acton Economic and Industrial Corporation.

II. Relationship with the Town of Acton

In all cases, the EDIC will insure that:

- a. The interests, as noted in (I) above, of the Town of Acton are represented.
- b. The Town of Acton is legally and financially insulated from the actions of the EDIC, except to enjoy the taxes generated by the development(s).

[Need town staff, officers and counsel to review the legislation and this plan to insure that the town's faith and credit is fully insulated. This review should consider especially the different financing vehicles that the EDIC may use.]

- c. In all other respects, the EDIC will be treated by the Town as any other private developer, subject to the same rules, regulations, and permitting processes.

In addition;

- d. The Economic Development Plan must be approved by an affirmative 2/3 vote at Town Meeting.
- e. The EDIC is required to hold its own public hearings for projects, in addition to the normal public hearings of the permitting process.
- f. The development projects of the EDIC must, in employing persons, "give to the fullest practicable extent preference to the residents of the Town".
- g. Real estate owned by the Corporation for its own business is considered to be public property and thus not taxable, but the Town may determine a payment in kind roughly analogous to a property tax. Real estate and property owned by the EDIC for economic development projects is subject to property tax.
- h. The Corporation is exempt from state income taxes.
[Is it exempt from federal taxes?]

[The legislation specifically says that debentures of the Corporation "shall not be deemed to constitute a debt of the commonwealth or town or a pledge of the faith and credit of the commonwealth or town".]

[The legislation does give the Corporation permission to ask the Town to pledge its full faith and credit to the solvency of the corporation. It also says that the Town "may borrow outside its debt limits to obtain money for loan to the corporation, or within its debt limits to obtain money for grants to a corporation".]

These actions would obviously "pierce the veil" of the arm's length relationship that was the intent behind the establishment of an EDIC. We should consider whether these options should be specifically prohibited by the Economic Development Plan in order to insure that that Town cannot be financially injured by any action taken by the EDIC, or, at the minimum, that any such action be required to be approved by Town Meeting. Alternatively, we should explore whether the Town might provide seed money for beginning EDIC research and staff, or perhaps provide staff assistance, or even donate unused town property for provide space for the EDIC, or that the EDIC may sell to generate startup funding, and whether the provision of such money, services or property makes the town vulnerable in any way to litigation that may arise from the actual development projects.]

[The intent of the legislation was to provide the Town with oversight via the option, in Town Meeting, to give permission to file the enabling home rule legislation, to accept the legislation, and to approve the Economic Development Plan, or "charter" of the EDIC. The Plan was meant to offer general guidelines as to the type and location of projects that the EDIC was empowered to develop. Other operational oversight is provided for, as well. In all other respects, however, the EDIC was to be treated as any other private developer.]

The final form of the legislation can be interpreted to require a Plan of significantly more detail than any EDIC could establish ahead of time. However the same paragraph requires specific Town Meeting approval of any zoning changes requested by the EDIC (none will be suggested by the EDC), which may imply that only the zoning changes need to be approved by Town Meeting, rather than any Plan with details about specific projects.]

[The legislation allows the corporation to contract with the Town for various services.]

[The legislation is silent as to whether the EDIC may make "distributions" of its profit on an interim basis to the Town. It also does not say how/whether the EDIC may be disbanded, or what happens to the leftover profits, if any, at that time. Our assumption is that they go to the Town. This needs to be researched.]

III. Restrictions by zoning districts in which the EDIC may develop

[The following is the tentative recommendation of the EDC]

The EDIC will be restricted to the following zoning districts:

- A. Light Industrial 1 District (LI-1)
- B. Light Industrial District (LI), excluding the River St. area.
- C. General Industrial District (GI), excluding Acorn Park
- D. Office Park 1 District (OP-1)
- E. Office Park 2 District (OP-2)
- F. Kelley's Corner District (KC)
- G. Limited Business District (LB)
- H. Powder Mill District (PM)
- I. The Village Districts--East Acton Village (EAV), North Acton Village District (NAV), South Acton Village District (SAV), West Acton Village District (WAV).

[There was some concern over EDIC activity in the Village Districts. However, since the EDIC is subject to the same zoning rules and regulations and permitting process as any other developer, inclusion of the Village Districts in the EDIC's activity area really doesn't change the context or the intent, and in fact, may make development consistent with the intent of those Districts more likely.]

- J. Small Manufacturing District (SM)

[Open issues: the Technology District and the W.R. Grace site.]

[The legislation gives the EDIC the right to take properties by eminent domain. However, this action is subject to the approval of Town Meeting by an affirmative 2/3 vote. We might consider whether to prohibit the EDIC from even asking Town Meeting for this power.]

[We should consider developing a list of parcels most likely to be developed by an EDIC, or most likely to benefit from EDIC involvement, or with the most "re-use" potential].

IV. Restrictions on the type of development that the EDIC may pursue

[By the terms of the legislation, the EDIC may pursue any type of development permissible under Acton's zoning bylaws in the Districts in which it may do business, the same as any other private developer. We could opt, however, to direct the EDIC to pursue only certain types of development which the Town feels is most consistent with its wishes, as expressed in the Master Plan Update, or we could prohibit the EDIC from making certain types of developments. This needs further discussion, first among the EDC, and then among other boards and committees as appropriate, and also with the public at large.]

V. Methods of Development

All methods of development are within the power of the EDIC, constrained by parts III and IV above, including:

- buying land for the purpose of development, sale, lease, or other financial arrangement
- buying developed properties for further improvement, sale, lease or other financial arrangement
- leasing land or properties
- leasing or purchasing properties for the purpose of "flipping" them to another buyer, or for the purpose of "protecting" the properties for another desirable buyer.

VI. Operational Financing

The EDIC will require some working capital for various expenses and potentially for staff.

[Research is required to figure out the best way to obtain working capital. Some seed money may be available from the state. In at least one case, an EDIC has obtained seed money from its host town by managing a construction project, at arm's length, for the town.]

Once the EDIC has completed its first project, it is free to use the cash flow or profit from that project as working capital.]

VII. Capital Financing

[Research is required to figure out the various ways to obtain capital financing and what kind of long-term capital structure the EDIC should establish. There are several ways of doing this, and the methods may vary by the type of project, the requirements of the seller(s), and the economy.]

The EDC will develop several scenarios over the next 60 days and explain how financing may be acquired in each of those circumstances.]

In general, the Corporation may obtain and operate with the same kinds of financial instruments as any private developer, including the issuance of revenue bonds.

VIII. The Business Case for Acton

Why should the taxpayers support the EDIC, from a financial perspective?

It is a rare no-lose situation. If the EDIC does nothing, the taxpayers are no worse off. Even if the EDIC defaults on its debt, the taxpayers are shielded. On the other hand, if the EDIC is successful in developing good properties, the taxpayers benefit. If the EDIC disbands, any leftover cash goes to the town. *[This needs to be confirmed].*

[Can the EDIC make interim "distributions" to the town?]

[Research is needed to determine the potential impact of the EDIC on the tax base and rate. The EDC will construct a number of scenarios that demonstrate the potential impacts over a ten-year period.]

In another sense, the taxpayers also win. Any property zoned for commercial or industrial development can be developed by its owner, within the zoning rules. The abutters and other interested parties have to assume that over time, with the general expansion of the economy and the population, that most developable properties will be developed. The question is: does the town wish to exert some level of control over how the properties are developed, or not?

[Further research should be done into commercial/industrial buildout potential.]

IX. Governance: The Board of Directors

The Board of Directors is comprised of seven members, appointed by the Selectmen. The legislation requires the following composition:

- One person experienced in commercial or industrial development
- One person experienced in financial matters
- One person experienced in real estate
- One person experienced in municipal government
- One person from the community at large
- Two others

[The legislation requires one member of the Board to be experienced in municipal government, and the EDC recommends that this person not be a current member of the Board of Selectmen. The reason for this is that in contrast to many towns where the Planning Board is the permitting authority for commercial development, in Acton the permitting authority is the Board of Selectmen. Placing a Selectman on the EDIC's Board could set up the Selectman for a serious conflict of interest.]

The terms of service of the Board members are staggered. The Board of Selectmen may remove a member of the EDIC Board for malfeasance, misfeasance, or willful neglect of duty.

["For purposes of Chapter 268A of the General Laws, the members of the corporation shall be deemed to be special municipal employees".....the implications of this need to be researched]

Each member of the Corporation is required to execute a surety bond in the penal sum of \$50,000. *[The reason for this is that the Town is not required to represent the Board members or to provide counsel in case the members of the Board are sued.]*

The Board members are not compensated for their services, but may be reimbursed for reasonable expenses, which shall be public record.

The Directors may elect officers, including a treasurer, and shall make an annual report to the selectmen, which shall include details of all financial transactions. The corporation's books shall be audited by certified public accountants.